

PANHANDLE EASTERN PIPE LINE,)
COMPANY, L.P.,)
))
Plaintiff,)
))
v.) No. 1:16-cv-02288-JMS-DLP
))
JOSEPH F. PLUMMER,)
DEBORAH L. PLUMMER,)
))
Defendants.)

Consistent with the Court’s Order entered this day, the Court **ENTERS** this Permanent Injunction in favor of Plaintiff Panhandle Eastern Pipe Line Company, L.P. (“Panhandle”) and against Defendants Joseph and Debora Plummer, as set forth below.

1. The parties have acknowledged, stipulated, and agreed that all photographs attached hereto are authentic, fair and accurate representations of the real and personal property depicted therein. The parties have also acknowledged, stipulated, and agreed that although the diagram attached hereto as **Exhibit 4** (“Exhibit 4 Diagram”) is not to scale and does not identify all of the trees situated within the 100 Line Right-of-Way (as defined herein), the intent of this diagram is to identify the approximate location of the Hedges (as defined herein), the Elm/Ash Tree (as defined herein), the Spruce Trees (as defined herein), and the Flowering Crabapple Tree (as defined herein).

2. With respect to the 400 Line, the Court orders as follows:

a. Panhandle’s 400 Line right-of-way is eighty-three feet (83’) wide, extending in a west-to-east direction from the west boundary of the center portion of Parcel No. 32-02-32-100-003.000-018 owned by the Plummers (the “Plummer Parcel”) to the east boundary of the center portion of the Plummer Parcel. Thirty-three feet (33’) of Panhandle’s 400 Line right-of-way is situated north of the centerline of the 400 Line as that centerline is presently situated (“400 Line Centerline”), and fifty feet (50’) of the 400 Line right-of-way is situated south of the 400 Line Centerline (collectively, “400 Line Right-of-Way”). Aerial photos of the 400 Line are attached as **Exhibit 2** hereto. For purposes of establishing the 400 Line Centerline under this injunction, the parties may rely upon the centerline of the 400 Line as it is located and marked either (a) by Panhandle at the time of any clearing work; or (b) in response to an Indiana811 call made by the Plummers.

b. Panhandle may exercise its rights to mow, clear, side-trim, defoliate, treat, and remove all vegetation, trees and brush within and overhanging into its 400 Line Right-

of-Way. The Plummers shall not interfere with or impede Panhandle's mowing, clearing, side-trimming, defoliation, treating, and removal efforts, and shall cooperate to provide Panhandle and its contractors access to the 400 Line Right-of-Way for this purpose.

c. The Plummers shall not interfere with or impede Panhandle's future exercise of its rights of ingress and egress to its 400 Line Right-of-Way. The Plummers shall not interfere with or impede Panhandle's future exercise of its rights to mow, clear, side-trim, defoliate, treat, and remove all growth and obstructions within or extending into the 400 Line Right-of-Way upon reasonable prior notice to the Plummers stating the approximate schedule for such work.

d. The Plummers shall not plant any growth (other than traditional agricultural growth) or place any structure or parked¹ vehicles within Panhandle's 400 Line Right-of-Way unless they have obtained the prior written consent of Panhandle.

e. The Plummers shall not construct, plant, or place, or authorize others to construct, plant, or place either upon, above or below the surface of, or extending into, Panhandle's 400 Line Right-of-Way any house, railroad track, garage, building, mobile home, house trailer, septic tank, drain pipe, tree, shrub, berm, lake, reservoir, swimming pool or other facility causing either the permanent or temporary retainment of water, or any other structure, facility, or tree-like growth, except utility installations not placed parallel to Panhandle's 400 Line, and crossing under the 400 Line at approximate right angles thereto and in such a manner as not to interfere with, endanger or damage the 400 Line.

The Plummers shall not change the grade of Panhandle's 400 Line Right-of-Way.

¹ For the limited purpose of this Order only, a "parked" vehicle shall mean an operable vehicle parked within the 400 Line Right-of-Way for more than twenty-four (24) hours but less than five (5) consecutive days.

f. The Plummers shall not use any portion of the 400 Line Right-of-Way for the parking of vehicles, and no impervious type pavement in connection with the establishment or use of any vehicular parking area shall be placed over or within the 400 Line Right-of-Way.

3. With respect to the 100 Line, the Court orders as follows:

a. Panhandle's 100 Line right-of-way is sixty-six feet (66') wide, extending in a west-to-east direction from the approximate west/southwest boundary of the Plummer Parcel to the east boundary of the Plummer Parcel. Thirty-three feet (33') of Panhandle's 100 Line right-of-way is situated north of the centerline of the 100 Line as that centerline is presently situated ("100 Line Centerline"), and thirty-three feet (33') of the 100 Line right-of-way is situated south of the 100 Line Centerline (collectively, "100 Line Right-of-Way"). Aerial photos of the 100 Line are attached as **Exhibit 3** hereto. For purposes of establishing the 100 Line Centerline under this injunction, the parties may rely upon the centerline of the 100 Line as it is located and marked either (a) by Panhandle at the time of any clearing work; or (b) in response to an Indiana811 call made by the Plummers.

b. Panhandle may exercise its rights to mow, clear, side-trim, defoliate, treat, and remove all vegetation, trees and brush within and overhanging into its 100 Line Right-of-Way, as the 100 line is located and the 100 Line Right-of-Way is measured by Panhandle at the time of the clearing; provided, however, that for the limited purposes of this injunction only and specifically not for purposes of interpreting the terms of any agreement between the parties, Panhandle shall not clear or side-trim the following trees and hedges identified on the Exhibit 4 Diagram and the accompanying photographs within Exhibit 4

hereto, and listed as follows: (a) the evergreen shrub² portions of the “Hedges” as indicated on the Exhibit 4 Diagram; (b) the “Elm/Ash Tree” as indicated on the Exhibit 4 Diagram; (c) the two (2) tall “Spruce Trees” as indicated on the Exhibit 4 Diagram; and (d) the “Flowering Crabapple Tree” as indicated on the Exhibit 4 Diagram. The Plummers shall not interfere with or impede Panhandle’s mowing, clearing, side-trimming, defoliation, treating, and removal efforts, and shall cooperate to provide Panhandle and its contractors access to the 100 Line Right-of-Way for this purpose.

c. The Plummers shall, at their expense and within thirty (30) days of this injunction Order, move the following items situated within or extending into Panhandle’s 100 Line Right-of-Way and identified in the photographs attached as exhibits hereto as indicated, to an area outside any of Panhandle’s rights-of-way on any Plummer-owned parcels: (a) spare air conditioner unit being stored under a blue tarp (**Exhibit 5** hereto); (b) Bobcat utility vehicle (**Exhibit 6** hereto); (c) large recreational vehicle (RV) (**Exhibit 7** hereto); (d) yellow pickup truck (**Exhibit 8** hereto); (e) grey SUV (**Exhibit 8** hereto); (f) large orange front end loader having miscellaneous items of personal property on it (and the miscellaneous items of personal property on it) (**Exhibit 9** hereto); (g) yellow front-end loader (**Exhibit 10** hereto); (h) large red flatbed truck (**Exhibit 11** hereto); (i) trailer having miscellaneous items of personal property on it (and the miscellaneous items of personal property on it) (**Exhibit 12** hereto); (j) large white flatbed truck having miscellaneous items of personal property on it (and the miscellaneous items of personal property on it) (**Exhibit 12** hereto); (k) large storage unit (**Exhibit 13** hereto); (l) metal

² For the limited purpose of this Order only, the term “evergreen shrub” refers to a shrub which retains green leaves throughout the year, such as a yew shrub or a juniper shrub. (See <https://www.dictionary.com/browse/evergreen> (last visited August 24, 2018)).

trailer covered by overgrowth (**Exhibit 14** hereto); and (m) scrap pile of wood and metal, and trailer under scrap pile (**Exhibit 15** hereto) (collectively, the “Artificial Encroachments”). The spare air conditioner unit, the large storage unit, and the scrap pile of wood and metal shall be permanently removed from the 100 Line Right-of-Way. The Plummers’ existing residence, existing septic systems, existing utility lines, and existing drainage swales are not subject to removal under this paragraph.

d. The Plummers shall, at their expense and within thirty (30) days of this injunction Order, permanently move any other stored³ vehicles, vehicle parts, storage units, scrap piles, and items which Plummers have placed within (or extending into) Panhandle’s 100 Line Right-of-Way since the parties’ joint inspection on July 30, 2018, to an area outside any of Panhandle’s rights-of-way on any Plummer-owned parcel.

e. The Plummers shall, at their expense and within thirty (30) days of this injunction Order, remove or trim to the ground all non-evergreen-shrub vegetation, non-evergreen-shrub saplings, and non-evergreen-shrub brush presently growing within that portion of the Hedges identified and depicted in Exhibit 4 hereto within Panhandle’s 100 Line Right-of-Way, as measured by Panhandle. Within five (5) business days following Panhandle’s receipt of a written request from the Plummers requesting that Panhandle measure and stake its 100 Line Right-of-Way in the area of the Hedges, Panhandle shall measure and stake its 100 Line Right-of-Way in the area of the Hedges to identify that portion of the Hedges situated within the 100 Line Right-of-Way.

f. The Plummers shall, within fifteen (15) days after receipt of any future written notice(s) from Panhandle of its intent to conduct routine mowing, clearing, side-

³ For the limited purpose of this Order only, a “stored” vehicle shall mean an inoperable vehicle.

trimming, defoliation, and/or treatment of its 100 Line Right-of-Way, temporarily move all stored or parked vehicles and all other obstructions off Panhandle's 100 Line Right-of-Way until such work is completed.

g. The Plummers shall not plant any growth (other than traditional agricultural growth) or place any structure or parked vehicles (except what is allowed in paragraph 6(k) below) within Panhandle's 100 Line Right-of-Way unless they have obtained the prior written consent of Panhandle.

h. The Plummers shall not construct, plant, or place, or authorize others to construct, plant, or place either upon, above or below the surface of, or extending into, Panhandle's 100 Line Right-of-Way any house, railroad track, garage, building, mobile home, house trailer, septic tank, drain pipe, tree, shrub, berm, lake, reservoir, swimming pool or other facility causing either the permanent or temporary retainment of water, or any other structure, facility, or tree-like growth, except (a) traditional agricultural growth, (b) the Hedges (except all non-evergreen-shrub vegetation, non-evergreen-shrub saplings, and non-evergreen-shrub brush growing within the Hedges), the Elm/Ash Tree, the Spruce Trees, and the Flowering Crabapple Tree; and (c) utility installations not placed parallel to Panhandle's 100 Line, and crossing under the 100 Line at approximate right angles thereto and in such a manner as not to interfere with, endanger or damage the 100 Line. The Plummers shall not change the grade of Panhandle's 100 Line Right-of-Way.

i. The Plummers shall not interfere with or impede Panhandle's future exercise of its rights of ingress and egress to and from its 100 Line Right-of-Way.

j. The Plummers shall not interfere with or impede Panhandle's future exercise of its rights to mow, clear, side-trim, defoliate, treat, and remove all growth and

obstructions within or extending into the 100 Line Right-of-Way upon reasonable prior notice to the Plummers stating the approximate schedule for such work; provided, however, that the Plummers' existing residence, existing septic systems, existing utility lines, existing drainage swales, existing Hedges (except all non-evergreen-shrub vegetation, non-evergreen-shrub saplings, and non-evergreen-shrub brush growing within the Hedges), the Elm/Ash Tree, the Spruce Trees, and the Flowering Crabapple Tree are not subject to removal. The Plummers shall provide Panhandle fifteen (15) days prior written notice before removing or relocating any trees situated within the 100 Line Right-Of-Way, and shall have a Panhandle representative present during any such removal or relocation.

k. The Plummers shall not use any portion of the 100 Line Right-of-Way for the parking of vehicles, and no impervious type pavement in connection with the establishment or use of any vehicular parking area shall be placed over or within the 100 Line Right-of-Way, except that the Plummers and their invitees may utilize those portions of the 100 Line Right-of-Way as reasonably necessary for the Plummers' use of the residence immediately adjacent thereto and for the use of the Plummers and their customers and invitees in connection with the Plummers' business as it was being conducted on April 7, 1999; provided, that the number of vehicles in such permitted parking shall not be expanded beyond the authorized use by the Plummers as of April 7, 1999. The Plummers' invitees and customers and the driveway and parking area shall not be expanded any time unless otherwise agreed to in writing by Panhandle and the Plummers.

4. With agreement of the parties, the Court orders as follows:

a. Nothing in this Order alters, amends, or informs the interpretation of, (a)

any of Panhandle's easement rights with respect to any Plummer-owned parcels, which remain in full force and effect; (b) any terms of the Settlement Agreement or the Amendment of Agreements between the Plummers and Panhandle, which remain in full force and effect; and (c) any of the Plummers' existing property rights.


b. This injunction Order shall automatically terminate on the day on which (a) the latter of Joseph F. Plummer's and Deborah L. Plummer's death; or (b) the day on which the Plummers transfer fee title to the Plummer Parcel to a non-family member. This injunction Order may also be terminated by written agreement of the parties containing the duly-notarized signatures of both a duly-authorized representative of Panhandle and the Plummers, upon the Court's approval of such agreement.

c. In the event Panhandle and the Plummers, or their respective successors and assigns, modify (by a writing signed by both parties and notarized) either the existing Settlement Agreement or Amendment of Easement Agreements] prior to the termination of this injunction Order, the parties shall file a notice of such amendment with the Court.

d. In the event Panhandle believes the Plummers to be in violation of this injunction Order, Panhandle shall provide the Plummers written notice of the alleged violation and the Plummers shall have fifteen (15) days from the date of the notice to cure the alleged violation. If the alleged violation is not cured after such cure period has lapsed, Panhandle may then seek an order to show cause why the Plummers should not be held in contempt, and Panhandle shall be entitled to recover its costs and reasonable attorneys' fees incurred in doing so.

e. The Court may award all other relief the Court deems appropriate in the premises.

Date: 10/22/2018


Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana